Extra copy

UNITED NATIONS

Distr.
RESTRICTED

1 April 1975

Original: ENGLISH

THIRD CONFERENCE
ON THE LAW OF THE SEA

Third Session

THIRD COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE NINETEENTH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 26 March 1975, at 10.55 a.m.

Chairman:	Mr. YANKOV	Bulgaria
Rapporteur:	Mr. MANYANG	Sudan

CONTENTS:

N.B. Participants wishing to have corrections to this provisional summary record incorporated in the final summary record of the meeting are requested to submit them in writing in quadruplicate, preferably on a copy of the record itself, to the Official Records Editing Section, room E.4121, Palais des Nations, Geneva, within five working days of receiving the provisional record in their working language.

A/CONF.62/C.3/SR.19
GE.75-63369

TRIBUTE TO THE MEMORY OF KING FAISAL OF SAUDI ARABIA

The CHAIRMAN, on behalf of the Committee, expressed condolences to the delegation of Saudi Arabia on the death of King Faisal. He announced that the President of the Conference proposed to call a special plenary meeting on 27 March to pay tribute to the memory of King Faisal of Saudi Arabia.

On the proposal of the Chairman, members of the Committee observed a minute of silence in tribute to the memory of King Faisal of Saudi Arabia.

Mr. HAJJAR (Saudi Arabia) thanked the Chairman and the Committee for the condolences expressed to his delegation on the tragic death of King Faisal.

PRESERVATION OF THE MARINE ENVIRONMENT

Draft articles on the prevention, reduction and control of marine pollution (A/CONF.62/C.3/L.24)

Sir Roger JACKLING (United Kingdom) introducing the draft articles on the prevention, reduction and control of marine pollution (A/CONF.62/C.3/L.24) on behalf of the sponsors, said that one of his delegation's main objectives at the Conference was to secure a commitment to prevent and control pollution. The United Kingdom was particularly vulnerable since its coastline was exposed to the busiest shipping lane in the world. It had taken the initiative in the Inter-Governmental Maritime Consultative Organization (IMCO) in formulating an 18-point programme to combat the dangers of accidental pollution, after the Torrey Canyon disaster in 1967 had made it clear what was required with regard to tanker construction and operation in order to prevent it.

The United Kingdom was also exposed to intentional pollution from vessels; it had taken a leading part in securing the amendment or adoption of a number of conventions relating to that form of pollution. As a coastal State, the United Kingdom recognized that the threat was essentially international and that it could be effectively controlled only by the imposition through international channels of a uniform set of regulations which set high safety standards. Such a course would also ensure co-operation by shipowners because they would have equality of treatment.

Indeed, the fact that accidents and intentional spillages had declined in recent years in spite of increases of traffic showed that co-operation between Governments and with shipowners was effective and that international regulations were being better observed.

With regard to the effective enforcement of international regulations, his delegation had submitted at the second session proposals which had stressed the primary responsibility of the flag State for ensuring the safety of its ships. It had, however, recognized that in the matter of vessel-source pollution many countries wished to introduce greater enforcement powers for States other than the flag State. In the light of those views and of the fact that many ships passing the coast of the United Kingdom did not call at its ports, his delegation had reached the conclusion that additional enforcement powers would be useful, provided there were sufficient safeguards against abuse.

In practice, enforcement took the form of surveying the ship and issuing it with an international certificate which was normally accepted in ports of countries parties to the relevant Convention. The Convention, however, also provided for inspection in ports of call in cases where there were grounds for suspecting that a ship or its equipment did not correspond with its certificate. Moreover, there were cases of violations at sea where the enforcement of discharge regulations was particularly difficult. The United Kingdom actively endeavoured to prosecute both national and foreign ships committing violations in its territorial waters when they entered United Kingdom ports; it also pursued cases with foreign Governments. Nevertheless, the United Kingdom authorities had found it difficult to obtain sufficient evidence for successful prosecutions, either at home or abroad. Over the previous five years, it had been possible to link with particular vessels, 203 of the 900 spillages occurring off United Kingdom coasts, but there had been only 18 successful prosecutions.

It was therefore clear that the main burden of enforcement action should occur before a ship committed a violation of pollution provisions, and for that reason his delegation had started from the premise that the flag State was initially responsible for its own ships.

That position was made clear in draft article 3 (A/CONF.62/C.3/L.24). In his country's experience, there was a good deal of co-operation from flag States in the case of ships which had violated regulations inside or outside territorial waters. Vessels did, however, escape prosecution because they passed the coast of the United Kingdom without calling at its ports. In such instances, there would obviously be an advantage in establishing a system of obligations on other States at whose ports such vessels subsequently called. Paragraphs 9-19 of draft article 3 therefore proposed a system of port State inspection and enforcement, and the right of a coastal State to require

information from a passing vessel. The coastal State would then have the option of asking, at its choice, either the flag State or the port State to take action. Draft article 3 imposed an obligation on both to comply with the request from the coastal State.

Although such changes in jurisdiction would not be a panacea, he was confident that the system of port State jurisdiction would be of value in the war against pollution by complementing better control by the flag State - provided for in paragraphs 6-8 of draft article 3.

As he had already indicated, one of the problems of dealing with alleged violations was the difficulty of securing evidence of the type required by the courts. Paragraph 12 of draft article 3 therefore proposed that such evidence should be collected at the next port of call, either at the initiative of the port State itself or at the request of a coastal State. Furthermore, in order to assist a coastal State in obtaining the relevant information on which to base such requests, paragraphs 20-22 of draft article 3 established its right to require information from any vessel; paragraph 21 imposed an obligation on the flag State to ensure that its ships supplied such information. Some countries were attracted by the idea of empowering coastal States to inspect and even arrest ships at sea. However, there were practical difficulties in stopping and boarding large ships in a busy sea lane, and any evidence so obtained would be equally available at the next port of call.

Draft article 3 built up a system of enforcement from the initial obligation of the flag State, through port State inspection and enforcement, to the right of the coastal State to require information from passing ships. Throughout, obligations and rights had been matched by suitable safeguards. It would be noted that the article showed a distinct shift in the United Kingdom position, partly as a result of reassessment of its requirements as a coastal State and partly in order to meet the position of many other countries.

The draft articles in document A/CONF.62/C.3/L.24 also covered sources of marine pollution other than vessel-source pollution, which presented fewer problems because they were static and susceptible to national control and to enforcement in conjunction with other States. There were also articles containing appropriate safeguards and provisions for the settlement of disputes

Mr. BENTEIN (Belgium) said that his delegation had become a sponsor of the proposals in document A/CONF.62/C.3/L.24 for a number of reasons. First, the draft articles strengthened current international regulations, including those of the 1973 Convention on pollution from ships, which had not yet entered into force. As a country interested in exploiting the living resources of the seas and having a coastline exposed to heavy shipping traffic, Belgium warmly supported such provisions. At the same time, his country processed products for re-export and was a transit country; it was accordingly concerned to ensure the unfettered and the harmonious development of shipping. It was therefore particularly interested in the proposed system for dealing with vessel-source pollution.

Draft article 3, while giving port States powers of inspection and prosecution in cases of alleged violations and coastal States extensive rights to require information, nevertheless acknowledged that the primary responsibility rested with the flag State. It was necessary to safeguard that principle in order to preserve the existing legal status of ocean-going vessels on the high seas, which was in the interests of all States, including coastal States. Moreover, the principle was balanced by strong guarantees of the rights of any injured port State.

At the same time, draft article 3 took account of the need not to impede maritime traffic. The principle of the combined powers of the port and the flag States ensured that the normal movements of ships would be maintained, since they would not be liable to arrest off the coasts of other States or to indefinite detention or the risk of being escorted to unsuitable ports.

For practical reasons, his delegation was not in favour of granting to coastal States more extensive powers than those proposed in the draft articles. On the other hand, it recognized that a State might have a special interest in preserving a particularly vulnerable area of the sea. That position was covered in paragraphs 2 and 3 of draft article 3, which provided for the establishment of special areas under international control.

Finally, the draft articles would establish a watertight system provided all States acceded to the proposed general convention on the law of the sea and the special conventions on the preservation of the marine environment. It would promote international co-operation and would be unacceptable only to those who sought to evade their international obligations. In particular, the provisions relating to

vessel-source pollution offered the advantages presented by a dual system of enforcement - by the coastal State and the flag State - without its concomitant disadvantages. At first sight, the system might appear complex, but closer study would show it to be both clear and logical.

Mr. RIPHAGEN (Netherlands) said that the Netherlands, one of the sponsors of the draft articles (A/CONF.62/C.3/L.24), was a coastal State with a number of large ports which handled a high volume of traffic, and was particularly vulnerable to vessel-source pollution. He therefore considered it essential to have an effective system for combating pollution and ensuring enforcement of the international regulations. The draft articles provided such a system and were a useful basis for discussion.

Mr. BUHL (Denmark) said that in sponsoring the draft articles (A/CONF.62/C.3/L.24), his delegation had been concerned to provide a realistic framework for drawing up internationally-agreed regulations to control marine pollution.

Referring to draft articles 1, 2 and 4 (pollution from land-based sources, from the exploration and exploitation of the sea-bed, and from dumping), he urged the need for a global approach in reaching agreements on those subjects. Regional measures which complied with internationally recognized guidelines should also be devised, in view of the long-range effects of pollution on marine ecology, and countries should harmonize their policies to ensure that the hazards were not simply transferred from one area to another.

Draft article 3 likewise emphasized the need for a global approach in order to ensure that the marine environment was preserved without detriment to international navigation. Denmark, which stood at the crossroads of major shipping lines, was keenly aware of the need to protect its coastline against vessel-source pollution, and that could be achieved only by strict regulations which were respected by all. Jurisdiction over vessels should, in his delegation's view, rest primarily with the flag State whose duty and right it was to ensure the effective enforcement of regulations, as provided for in paragraphs 6-8 of article 3, but that jurisdiction should be supplemented by the port State's right of inspection and enforcement, as provided in paragraphs 9-19.

His delegation attached particular importance to the adoption of special mandatory methods, such as those contemplated in draft article 3, paragraphs 2-4, to prevent pollution by ships of especially vulnerable areas, such as the waters of the Arctic; the need for such methods was recognized in the 1973 Convention for the Prevention of

Pollution from Ships and by the 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area. Governments responsible for such areas should be able to invoke the procedures laid down in paragraphs 2-4 to prevent deterioration of the marine environment.

Mr. HAKAPÄÄ (Finland) welcomed the draft articles (A/CONF.62/C.3/L.24), which proposed a well-balanced solution to many of the problems of marine pollution and, in defining the powers of flag, port and coastal States regarding vessel-source pollution, took account both of the need to protect the marine environment of coastal States and of the interests of navigation. A useful basic criterion in defining the enforcement powers of the port State and the right of the coastal State to require information would be the damage caused or likely to be caused to coastal interests.

Some of the draft articles, however, required elaboration. For instance, the convention should stipulate that the coastal State retained its powers of regulation and enforcement within its territorial waters. Several countries, including his own, had made rules for protecting the marine environment which his delegation saw no reason to rescind. It was nevertheless prepared to support a solution which would make the design, construction, manning or equipment of ships subject to international regulation.

On the question of the provisions for special areas, the coastal State should, under the control of the competent international organization, have certain powers regarding the regulation of vessel-source pollution.

Lastly, there was an urgent need for agreement on the basic principles of responsibility and liability for the activities of both States themselves and persons within their jurisdiction. In the event of violations, the State responsible should be required to cease the wrongful act and to compensate for the damage caused.

Mr. KATEKA (United Republic of Tanzania) observed that, under article 1 of the draft articles (A/CONF.62/C.3/L.24), States would be obliged to implement international standards with regard to land-based sources of marine pollution which would place a disproportionately heavy burden on developing countries. In order to avoid such an anomaly, the developing countries, pursuant to the Stockholm Declaration on the Human Environment, had insisted in the Sea-bed Committee and at the previous session of the Conference that a provision requiring economic factors to be taken into account should be included in any new convention concerning marine pollution control. Developing countries would do their utmost to control land-based sources of marine pollution, but they believed that such control could best be effected by national regulations which took due account of international standards.

The draft articles favoured flag State jurisdiction at the expense of coastal and other third States, although experience had shown that flag State jurisdiction was ineffectual. Moreover, the relevant articles contained so many conditions and exceptions that they deprived the port State of effective enforcement powers. Furthermore, article 3 required States to act through "the competent international organization". It was the view of his delegation that competence with regard to pollution might not be limited to a single organization and that the issue of competence should not be foreclosed by making reference to one agency only. In any event, his delegation preferred the term "international co-operation", which was a neutral formulation which did not determine competence.

There was also the question of whether residual powers should be allocated to the coastal or the flag State; paragraph 5 of article 3 appeared to favour the flag State. Even in "special areas" (paragraph 2) States would act through the competent international organization, which meant that residual powers were not given to the State affected but to the international community. His delegation doubted the effectiveness of such procedures, bearing in mind that international regulations tended to be general in scope and would be unlikely to cater for special climatic conditions. Moreover, the countries concerned might not be prepared to entrust responsibility for their vulnerable environment to third parties.

In addition to residual powers, the coastal State should have enforcement powers. Coastal States could not mortgage their marine environment to flag States. The representative of the United Kingdom had stated that coastal States did not have the means of detecting violations. While that might be true in existing circumstances, it would not necessarily apply throughout the duration of the Convention. Coastal State enforcement powers would act as a deterrent to potential culprits in the area under their jurisdiction. Since it was in the interests of developing countries to ensure the unhampered flow of trade, such powers would not be used to interfere with international navigation.

Paragraph 5 of article 6 provided that the enforcement powers would not apply to vessels in non-commercial government service. By implication, therefore, government-owned vessels used for commercial purposes would be subject to those provisions. The whole issue of ownership needed to be reviewed thoroughly, in view of the fact that

the shipping fleets of many developing countries were government-owned, irrespective of the purpose for which they were used, and should not be subjected to foreign jurisdiction. The rationale of sovereign immunity, after all, was to prevent sovereign power from being subjected to the jurisdiction of another. Since the issue under consideration was the prevention of pollution and not the protection of ships, the draft articles should deal with the status rather than the nature of the vessels in question.

Mr. JAIN (India) said that, on the subject of marine pollution, his delegation maintained the position it had taken in document A/CONF.62/C.3/L.6, submitted at Caracas. It felt strongly that the interests of coastal States had not received due consideration in the draft articles in document A/CONF.62/C.3/L.24. He had noted that Greece, a sponsor of the draft articles, had apparently reverted to the idea of port State jurisdiction, notwithstanding the proposal it had submitted in Caracas (A/CONF.62/C.3/L.4). His delegation's view that primary jurisdiction should rest with the coastal State was prompted by the fact that India, with a long coastline and substantial resources to protect from pollution, had embarked upon a programme to build up its merchant fleet. It advocated a balanced approach which would take account not only of the requirements of navigation but also of the need to protect coastal resources against pollution.

Draft articles, 1 and 2 envisaged both national and international regulations. The document did not, however, specify the international regulations with which a State would have to comply. He therefore suggested that a provision might be added to the effect that the regulations of a coastal State should take account of the international regulations drawn up by a competent international organization.

Paragraphs 2 and 3 of article 3 were designed to protect the interests of coastal States in cases where there were no internationally agreed regulations. It seemed to him, however, that the mere availability of regulations without the power to enforce them would be of little effect. Similarly, the approach whereby regulations would be applied only if first approved by an international organization was of doubtful value. It was essential to have set standards for coastal areas if the environment was to be protected and the draft articles did not meet that requirement.

While agreeing in principle with the provisions for port State enforcement (article 3, paragraphs 11-19), he considered that some amendments were needed. For example, paragraph 14(a) stipulated that a period of six months should elapse before proceedings for violation of regulations were taken by a port State. There might, however, be instances when, from the point of view of evidence, it would not be advisable to wait so long.

Moreover, the penalties for violation should not be confined to those mentioned in paragraphs 17 and 18, since in some cases a more severe penalty, such as seizure of a vessel, might be appropriate. The cases in which that might be so might be defined subsequently.

He failed to see what purpose would be served by the provisions on a coastal State's right to require information (paragraphs 20-22) if it lacked the power to inspect or take enforcement action itself. The sponsors of the draft articles might consider a provision whereby a coastal State, in the event of violation of the regulations, could request a port State to arrest the ship and send it back to the coastal State, using something in the nature of extradition proceedings for the purpose. In advocating that course, he had in mind only serious violations, when the interests of the coastal State should override the requirements of navigation.

In the draft article on dumping (article 4), he suggested that the words "control and regulate" should be added after the word "authorize" in paragraph 3.

Lastly, with regard to the United Kingdom representative's reference to steps taken to deal with the problem of pollution in earlier Conventions, he pointed out that paragraph 2 of the 1973 IMCO Convention for the Prevention of Pollution from Ships empowered coastal States to initiate proceedings in the event of violation of regulations. The draft articles seemed to constitute a movement away from that position.

Mr. KAWAGUCHI (Japan) said that his delegation found document A/CONF.62/C.3/L.24 a very comprehensive and constructive proposal designed to establish an effective system of preserving the marine environment without unduly interfering with the legitimate uses of the ocean.

Effective international co-operation in the prevention of vessel-source pollution required the application of uniform standards established by the competent international organization. His delegation therefore attached great importance to paragraphs 1 and 4 of article 3, and to paragraph 6 and subsequent paragraphs of that

article, which outlined the respective competences of flag States, port States and coastal States in the event of a violation of the international regulations.

Mr. TRESSELT (Norway) said that document A/CONF.62/C.3/L.24 made a useful contribution to the work of the Committee. He welcomed the fact that the draft articles were sponsored by a number of maritime powers.

The draft articles provided practical and generally satisfactory solutions for certain issues. However, it would be necessary to deal with other issues in order to produce the comprehensive and balanced provisions necessary to safeguard the common interests of States with regard to the protection of the marine environment and the maintenance of a rational system of international maritime transport.

The draft articles submitted by the USSR in document A/CONF.62/C.3/L.25 were a useful complement to the nine-Power draft articles in some respects; nevertheless, a still broader field must be covered in order to achieve a comprehensive and balanced approach.

Mr. MOORE (United States of America) welcomed the draft articles in document A/CONF.62/C.3/L.24, in which careful attention was paid to certain specific problems, and which would be very useful in the final phase of the Committee's work.

It was particularly important to have effective uniform international standards of protection against vessel-source pollution in the economic zone so as to protect the marine environment and vital trade, and to enable all nations affected to have a voice in the decision-making process. There seemed to be general agreement on the need to improve the current system of enforcement of international standards for vessel-source pollution, and on the inadequacy of leaving enforcement to the flag State alone. In his delegation's view, document A/CONF.62/C.3/L.24 placed too many restrictions on the enforcement of international rules by port States. A truly effective system of port State enforcement should be given an important place in the current negotiations.

In conclusion, he pointed out that article 4 contained no definition of dumping; he assumed that it implied dumping as defined in the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

Mr. GUEYE (Senegal) expressed the view that paragraph 1 of draft article 1 of document A/CONF.62/C.3/L.24 gave the coastal State no sufficient safeguards against pollution of its coasts. With regard to paragraph 2 of article 3, he considered that the volume of maritime traffic should be sufficient to establish the existence of a special area, without the need for scientific and technical evidence. Furthermore, that article made no reference to the action that should be taken by the coastal State in its economic zone in order to combat vessel-source pollution. To that end, the coastal State should have overriding competence, and should be able to enact its own laws in conformity with international regulations.

Mr. LEGAULT (Canada) said that he was in general agreement with the approach adopted by the sponsors of document A/CONF.62/C.3/L.24. Vessel-source pollution controls should indeed be based on internationally agreed rules and standards. However, it was vital for coastal States to retain the right of environmental self-protection and to ensure effective enforcement of agreed standards, with participation in such enforcement by coastal States, port States and flag States. His delegation did not believe that that would lead to a plethora of conflicting regulations, provided the relevant provisions contained appropriate safeguards. His country was as anxious to preserve the marine environment as it was to maintain freedom for international shipping.

It was not clear, however, whether the draft articles were intended to complement other articles: as they stood, they seemed to be intended more for the protection of shipping than for the preservation of the marine environment. For example, no reference was made in the draft articles to the very important general obligation of States to preserve the marine environment. Furthermore, they made no mention of the economic zone or of the jurisdiction, rights and obligations of coastal States with regard to preservation of the environment in the economic zone. His delegation regretted the rejection by the sponsors of the economic zone or patrimonial sea approach, which was the very foundation for general agreement on all aspects of the future convention.

Article 1, which related to land-based sources, was weaker than the equivalent provisions negotiated at earlier conferences, and did not reflect the Stockholm principles and the concerns of the developing countries. Article 2, on sea-bed exploration and exploitation, appeared at first sight to be generally acceptable and useful.

With regard to vessel-source pollution, it was regrettable that no provision had been made in the draft articles for the adoption by the coastal State of anti-pollution standards even in its territorial sea, or even in accordance with internationally agreed rules. He agreed with the Finnish delegation that the coastal State should retain full powers within its territorial sea to prevent pollution, and should also have certain rights and obligations in its economic zone. He believed that special provision should be made for pollution control in critically vulnerable areas.

With regard to flag State enforcement, the articles needed to be strengthened and expanded. As to port State inspection, the articles offered no new provisions; they might even limit the port State's power to inspect vessels. With regard to port State enforcement, on the other hand, his delegation's preliminary view was that the draft articles contained many new and constructive elements; they also indicated a welcome shift in the position of some of the sponsors.

With regard to the coastal State's right to require information, he pointed out that the rights ostensibly granted under the provisions in question were already embodied in the 1973 IMCO Convention for the Prevention of Pollution from Ships. That Convention provided for coastal State enforcement, whereas the new draft articles made no allowance for the enforcement of international standards by the coastal State even in its territorial sea, much less in its economic zone. As to the alleged difficulty of arresting a vessel at sea, he observed that, in some areas of the world, such arrests were common practice.

With regard to article 4, on dumping, the provisions were generally satisfactory, except that paragraph 1 might need to be clarified.

Article 5, concerning responsibility and liability, covered private interests; provisions should, however, also be made for State liability.

Article 7, on the settlement of disputes, was a very general provision: a special procedure might be necessary in the case of vessel-source pollution.

Additional draft articles on prevention of pollution of the marine environment (A/CONF.62/C.3/L.25)

Mr. TIKHONOV (Union of Soviet Socialist Republics) said that each State's contribution to the prevention of pollution of the marine environment depended on the significance it attached to the protection of the environment within its territory and the responsibility for prevention of pollution it imposed on its nationals, ships and organizations operating outside its territory.

The legislation of the Soviet Union contained a body of regulations designed to protect the marine environment from pollution. That legislation provided effective measures to prevent pollution in Soviet internal waters and its territorial sea by Soviet and foreign ships and the pollution of the high seas by Soviet ships. For example, it was a criminal offence, punishable by a fine of up to 20,000 roubles, for Soviet ships to discharge proscribed harmful substances in the high seas.

Moreover, his Government was always prepared to co-operate on the bilateral, regional and multilateral levels to protect the marine environment. It was a party to the International Convention for the Prevention of Pollution of the Sea by Oil and was already voluntarily applying the 1969 amendments to its ships without waiting for their entry into force. It was a signatory to the 1972 London Convention on dumping and the 1973 Convention for the Prevention of Pollution from Ships. Many important provisions of the last-mentioned Convention concerning the construction of purifying equipment and ship design were already being applied in Soviet ports and on Soviet ships. In 1974 the Soviet Union had acceded to the International Convention relating to intervention on the high seas in cases of oil pollution casualties and had signed the 1973 Protocol extending that Convention to other harmful substances. One of the first regional agreements - the 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area - had been drafted and adopted with the USSR's participation.

At the same time his Government was well aware that there was still considerable scope for international co-operation in protecting the marine environment and that the international regulations on the problem could be more universal and effective if they covered a wider range of sources of pollution, many of which were more dangerous than shipping. The Conference could do much to remedy that situation in the interests of all mankind.

His delegation supported the draft articles on the prevention, reduction and control of marine pollution submitted by nine delegations, including three representing socialist countries (A/CONF.62/C.3/L.24). The sponsors had adopted the right approach towards reconciling national and international rules and had correctly evaluated various sources of pollution from the international point of view.

Much importance was attached in those draft articles to national rules for the prevention of land-based pollution and pollution arising from exploration and exploitation of the sea-bed. That was essential because of the inadequacy of current international rules and because, as coastal States bore the main responsibility for stopping such pollution, they should be empowered to establish additional and more stringent rules to prevent it, including a total prohibition of such activities.

In principle the same kind of approach had been taken in the draft articles to the dumping of waste and other matter in areas adjacent to coasts. A large measure of agreement had been achieved on article 4, which conferred on the coastal State the exclusive right to allow or prohibit dumping in established zones and to promulgate laws and rules which it would enforce.

Clearly, a somewhat different approach had to be adopted to preventing pollution from ships. In that respect the draft articles correctly emphasized the importance of international rules (article 3, paragraphs 1 - 4). Serious difficulties for shipping might arise if each country were allowed to promulgate its own rules on the subject. Discrepancies would inevitably arise between the rules of different States, and in time ships might have to face not a unified international code but separate provisions applicable in different parts of the world.

Enforcement provisions were prominent in the nine-power proposal. His delegation would prefer the Conference to adopt the principle of the jurisdiction of the flag State in the high seas. However, in order to reach agreement, it was prepared to accept the proposal in the draft articles for an amplification of that principle by a limited grant of competence to the coastal State over any foreign ship coming into its ports. An essential condition should be the establishment of safeguards against the abuse of power by the port State and the avoidance of unnecessary international complications. In particular the articles should include the flag State's primary right to take proceedings within a fixed period against any persons in breach of the rules; the imposition of only monetary fines for such breaches; the immediate release of the ship on paying a deposit or giving some other guarantee for payment of the fine; and full compensation for any damage caused by unjustified measures

taken against the ship. In that connexion, his delegation had some doubts about article 3, paragraphs 11 and 12 of which enabled the port State to take proceedings against a foreign ship even when it had committed a breach of international rules many hundreds of miles from the coast of any State.

The nine-power draft did not touch on the important problem of whether or not coastal States could establish in their territorial sea national rules concerning the construction, equipment, operation and manning of foreign ships. In practice, technical innovations were often applied only to newly-built ships. The introduction of new rules called for special care, and at the national level rules for the prevention of pollution should not be made applicable to foreign ships. His delegation's views on that point were reflected in article 2 of its additional draft articles on prevention of pollution of the marine environment (A/CONF.62/C.3/L.25).

The problem of combating pollution in international straits situated within the territorial sea was a complicated one. The only way to deal with it was to include in the future convention provisions, such as those in article 3 of his delegation's draft articles, prohibiting in straits any discharge from ships of harmful or toxic substances either on board or being transported, as well as mixtures containing such substances. Such a rule would complicate the position of ships passing through straits but was essential in order to reach agreement concerning the régime of straits.

An important element in the Soviet draft articles was the rule in article 4 about the right of intervention by the coastal State in the event of a serious threat of pollution affecting its coastline or related interests, but arising outside the territorial sea of that State. The text of that article embodied the principles of the 1969 Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties and of the 1973 Protocol extending that Convention to accidents in ships transporting any harmful or dangerous substances. Those principles were given greater prominence in the additional draft articles, and, in the interests of protecting the marine environment of coastal States, their right to intervene was also recognized in cases of accidents connected with the exploration and exploitation of sea-bed resources.

A/CONF.62/C.3/SR.19

Mr. KATEKA (United Republic of Tanzania) observed that the sponsors of both sets of draft articles had submitted them to the Committee after serious negotiations had already begun, thereby re-opening the debate. His delegation considered that the proposals should have been submitted informally to the Working Group.

He had noted that in the draft articles submitted by the Soviet Union (A/CONF.62/C.3/L.25), throughout the text, wherever the rights of coastal States were referred to, the word "may" was used, but that where their obligations were referred to, the word "shall" was used, which gave the impression that the rights were an optional matter. His delegation considered that uniform terminology should be used throughout the text.

Moreover, the Soviet text appeared to limit jurisdiction to the territorial sea. He did not think that would provide a sound basis for negotiations.

Mr. THACHER (Observer for the United Nations Environment Programme), speaking at the invitation of the Chairman, introduced the report on the Global Environmental Monitoring System (GEMS) (A/CONF. 62/C.3/L.23 and Corr. 1), which had been prepared at the request of the Committee.

Monitoring, for UNEP, meant a system of continued observation, measurement and evaluation. In the context of GEMS, its objective was to provide the information necessary to ensure, in conjunction with evaluation and research, the protection of human health, well-being, safety and liberty, and the wise management of the environment and its resources. That objective was to be achieved by increasing quantitative knowledge of natural and man-made changes in the environment and of their impact on human health and well-being; by increasing understanding of the environment and, in particular, of how dynamic balance was maintained in ecosystems, as a basis for managing resources; by providing early warning of significant environmental changes, including natural disasters, so that protective measures could be organized; and finally, by making it possible to check the effectiveness of established regulatory mechanisms and to plan optimal technological development.

The legal basis for the System was principle 15 of the general principles for assessment and control of marine pollution adopted by the Intergovernmental Working Group on Marine Pollution in 1971 in preparation for the United Nations Conference on the Human Environment. That principle required that every State should co-operate with other States and with competent international organizations with a view to the development of marine environmental research and survey programmes, and of systems and means for monitoring changes in the marine environment, including studies of the State of the oceans, the trends of pollution effects, and the exchange of data and scientific information on the marine environment. It further required that there should be similar co-operation in the exchange of technological information on means of preventing marine pollution, including pollution that might arise from exploration and exploitation of off-shore resources.

That principle, together with a statement of objectives on marine pollution, had been endorsed by the Environment Conference as one of the guiding concepts for the Conference on the Law of the Sea and had in turn received the endorsement of the United Nations General Assembly. The GEMS project had been established by the Governing Council of UNEP at its first session, and had been the subject of considerable international discussion, notably at the Intergovernmental Meeting on Monitoring in February 1974, in which more than 50 governments had participated. The system was thus founded on the decisions of governments over the previous four years.

The System was essentially international in character. Although the facilities upon which it relied belonged to national governments, it was vital that monitoring efforts should be compatible and convertible, methods intercalibrated, and data presented in a standardized and readily usable form. The system was a co-ordinated effort by Member States, United Nations agencies and other organizations, and UNEP to ensure that information on critical environmental variables, such as pollutant levels and the state of living resources, was collected in an orderly and adequate manner, in order to provide governments with a quantitative picture of the state of the environment and of natural and man-made global and regional trends. Because of its regional and global nature, the System's main concern would be with programmes likely to lead to concerted action by several countries, or with programmes that could

yield results in which more than one country would be involved. It would also provide a framework within which Member States could exchange information on the monitoring experience they had gained at the local level, and thus ensure that their data were comparable with those collected elsewhere for the same projects.

Participation in the System was entirely voluntary. However, Governments had agreed at the Intergovernmental Meeting on Monitoring that nations which had agreed to participate incurred an obligation to exchange promptly any appropriate data, especially in relation to the early warning of natural disasters, or disasters occurring as a result of human activities affecting regional or subregional resources. In order to give the System more comprehensive coverage, UNEP would welcome any proposals by States to assume greater responsibility in that regard.

UNEP would continue to do its utmost to stimulate and facilitate participation by Governments in environmental monitoring programmes. The Environment Fund was prepared to provide financial and other forms of assistance either by giving aid direct or by mobilizing resources elsewhere. Efforts would also be made to encourage the exchange of experience and expertise.

One of the essential tasks of the System was the monitoring of the marine environment in the context of the environment as a whole. As early as 1971, however, Governments had recognized the need to rely largely on regional efforts to attack the problem of marine pollution in individual bodies of water, and the Action Plan being put into operation in the Mediterranean was an example of such an effort. The Programme was planning to take similar initiatives with the Governments concerned in other areas, such as the Red Sea, the Indian Ocean and the Caribbean.

Effective implementation of the Global Environmental Monitoring System depended on the co-operation and participation of governments, and he hoped that any treaty provisions that the Committee might ultimately recommend would help to strengthen such co-operation.

The meeting rose at 1.40 p.m.